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Of Attorneys for Defendant
JACOB MICHAEL GAINES

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,)
)
Plaintiff)
)
v.)
)
JACOB MICHAEL GAINES,)
)
)
Defendant)
)
)
_____)

Case No. 3:20-CR-223-IM

DECLARATION OF
COUNSEL IN SUPPORT OF
DEFENDANT'S MOTION TO
CONTINUE JURY TRIAL

I, Rosalind M. Lee, state and declare under penalty of perjury that:

1. I am an attorney, and in that capacity I represent Mr. Jacob Gaines, the defendant herein;
2. I was appointed to represent Mr. Gaines on August 14, 2020, by the Honorable Karin J. Immergut pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A(e)(2).
3. On July 12, 2020, Mr. Gaines was charged by information with one count of assaulting a federal officer in violation of 18 U.S.C. section 111(a)(1) and (b). He

- was ordered released by the Honorable Stacie Beckerman. The government appealed, and, after a hearing, was ordered detained by the Honorable Michael Mosman.
4. On July 16, 2020, the grand jury handed up an indictment charging Mr. Gaines with a single count of assault on a federal officer.
 5. Mr. Gaines was arraigned on the indictment on August 12, 2020.
 6. On September 30, 2020, the court excluded time between October 13, 2020, and January 12, 2021, under 18 U.S.C. §3161.
 7. On November 2, 2020, the defense filed a Motion for Pretrial Release. The government filed a response on November 5, 2020; and the defense filed a reply on November 10, 2020. On November 13, 2020, the court held a hearing on defendant's motion. The motion was denied.
 8. On November 27, 2020, the defense filed a Notice of Interlocutory Appeal, appealing the court's ruling of November 13, 2020. That appeal is pending before the Ninth Circuit Court of Appeals. The defense filed its opening memorandum on December 11, 2020; the government's response is due December 21, 2020, and the defense's reply is due December 28, 2020.
 9. This matter is set for trial on January 12, 2021. This is the second trial setting.
 10. As of the date of this filing, there are 22 days remaining under the Speedy Trial Act, 18 U.S.C. section 3161(c)(1).
 11. A continuance is necessary because the government has not provided all discovery in this case. I am informed by AUSA Chris Cardani that there is video of the incident captured outside of the United States Courthouse that contains content relevant to the alleged incident, and that the government will be providing that video to the defense.
 12. A continuance is also necessary, because of the ongoing state emergency due to COVID-19:

- a. I live and practice in Eugene, Lane County, Oregon.
- b. Both Lane County and Multnomah County are classified as “Extreme Risk” counties by the Oregon Health Authority. *See* <https://coronavirus.oregon.gov/Pages/living-with-covid-19.aspx#currentrisklevelbycountymap> (last visited December 17, 2020).
- c. My legal assistant is in a high-risk category for serious illness or death due to COVID-19.
- d. To prepare for a trial in this matter, I will need to travel between Lane and Columbia Counties to meet with my client in person. This travel requires passing through five counties, all of which are classified as Extreme Risk by the Oregon Health Authority. *Id.*
- e. By preparing for trial in this matter in December and January, I believe that I will greatly increase my risk of being exposed to COVID-19.
- f. Due to COVID-19 there are no contact visits at the Columbia County Jail. All visits are through glass, which limits my ability to work with my client. For example, I cannot review documents confidentially with Mr. Gaines. To review documents with my client, I have to request permission from the jail staff. To give my client a document to review, deputy must unlock the “paper pass” between me and my client. A paper pass is a slot below the window in the wall between me and my client in the interview room. After I slide the paper through the slot, the deputy reviews the document, then hands it to my client. The deputy then locks the paper pass and leaves the interview room. In these non-contact interview rooms, I cannot show work product documents to my client without having jail staff review them first. In a contact visit, jail staff does not review

documents before handing them to my client. These visits are inadequate for meaningful trial preparation.

- g. Based on my experience, there is nothing about this case that would require that it go to trial during a pandemic. For example, I am aware of no witness availability issues or speedy trial issues that require that the case go to trial in January, 2021.

13. I have conferred with Mr. Gaines; I have informed him of his rights under the Speedy Trial Act. He informed me that he has no objection to continuing the trial in this matter.

14. AUSA Chris Cardani informs me that he has no objection to the proposed continuance and exclusion of 120 days.

15. Within the meaning of 18 U.S.C. section 3164(c), Mr. Gaines has been in custody for 159 days, as of the date of this motion.

I swear under penalty of perjury that the foregoing is true and correct to the best of my ability.

DATED: December 17, 2020

/s/ Rosalind M. Lee
Rosalind M. Lee